

NATIONAL RAILWAY EQUIPMENT CO.

HOME OFFICE 14400 S. ROBEY STREET · P. O. BOX 2270 DIXMOOR, ILLINOIS 60426
TELEPHONE (708) 388-6002 FAX (708) 388-2483



AUG 2 2010
FILED

Date: July 29, 2010

Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

RECORDATION NO. 29392 FILED

AUG 02 '10 -4 41 PM

SURFACE TRANSPORTATION BOARD

Attn: Equipment Recordation

To Whom It May Concern:

I have enclosed for recordation, pursuant to the provisions of 49 U.S.C. 11301, an original and one counterpart of the locomotive lease agreement, as well as a memorandum of lease agreement and a schedule, all of which is dated July 14, 2010 a primary document under the Board's recordation regulations.

The names and addresses of the parties to the enclosed document are as follows:

Lessor: National Railway Equipment Co.
14400 S. Robey St.
Dixmoor, IL 60426

Lessee: Industrial Railway Switching & Services, Inc.
1020 Washington Avenue
Chicago Heights, IL 60411

A description of the equipment covered by the Lease Agreement is as follows:

One SD40-2 EMD Six Axle Locomotive bearing the road number NREX 7351
and One SD40-2 EMD Six Axle Locomotive bearing the road number NREX
7352

A short summary of the document to appear in the index is as follows:

"Locomotive Lease Agreement"

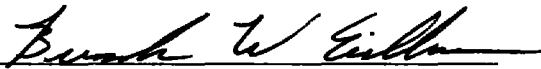
Also enclosed is a check in the amount of \$41.00 payable to the Surface Transportation Board to cover the required recordation fee for the attached agreement.

Please date-stamp and return an original copy after recordation to:

Brandon Eichhorn
National Railway Equipment Co.
14400 South Robey Street
P.O. Box 2270
Dixmoor, IL 60426

Sincerely,

NATIONAL RAILWAY EQUIPMENT CO.

By: 
Brandon W. Eichhorn

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LOCOMOTIVE LEASE AGREEMENT**SURFACE TRANSPORTATION BOARD**

THIS LOCOMOTIVE LEASE AGREEMENT ("Lease"), entered into as of this 14th day of July 2010, between the National Railway Equipment Co., an Illinois corporation. ("LESSOR"), and Industrial Railway Switching & Services, Inc., an Illinois corporation. ("LESSEE").

LESSOR AND LESSEE HEREBY AGREE AS FOLLOWS:**1. LEASE AND LEASED PROPERTY**

Lessee hereby leases from Lessor, the locomotives. ("Locomotives"), together with the parts, accessories, attachments and devices, if any, now or hereafter affixed thereto, as described in Schedule "A" attached to and made part hereof.

2. TERM

The term of this Lease for the locomotives shall be the fixed term set forth in Schedule A, commencing on the date such locomotives are delivered to Lessee ("Commencement Date"). Upon termination of the lease, Lessee shall affect prompt delivery of the locomotives to Lessor at its Mount Vernon, Illinois manufacturing facility.

3. RENTAL

A. The rental payable shall be the sum identified in Schedule A payable in advance monthly installments, with one month of advance rent payable upon purchase order receipt date and, in addition, two months of rent payable upon purchase order receipt date to be held as a security deposit. Lessee shall operate such locomotives in service only on its railroad. If the Commencement Date for the locomotives does not fall on the first day of the month, the first rental payment shall be prorated accordingly.

B. Payments past due for more than five (5) days shall bear interest at the rate of twelve percent (12%) per annum

C. All rentals shall be paid to Lessor at:

National Railway Equipment Co.
1473 Paysphere Circle
Department 1473
Chicago, IL 60674

or at such other address as Lessor may direct in writing.

4. TAXES

Lessee shall pay all use, excise, ad valorem, stamp, documentary and similar taxes on or relating to this lease of the locomotives, or the use, registration, rental, maintenance, possession or operation thereof, and shall file any returns required therefore, and shall hold Lessor harmless against any liability and expense (including attorney fees and costs) on account of Lessee's failure to do the same.

5. OWNERSHIP AND LESSOR'S INSPECTION

A. The locomotives shall at all times remain the sole and exclusive property of the Lessor.

B. Upon reasonable notice to Lessee, Lessor or its agents shall have free access to the locomotives at reasonable times for the purpose of inspections.

C. No accessions, additions, alterations or improvements to the locomotives of any nature shall be made without Lessor's consent, but if any are made, they immediately shall become part of the locomotives and shall become Lessor's property.

D. Lessor shall keep the locomotives at all times, free and clear from all claims, liens and encumbrances.

E. This Lease is intended to be a lease of the locomotives with a mandatory buyout at the termination date of the lease agreement.

6. DELIVERY RETURN

Lessee shall accept delivery of the locomotives at Paducah, Kentucky ("Delivery Location"). Except as set forth in the Lease, upon expiration or other termination of this Lease, Lessee shall return such locomotives to Lessor at Mount Vernon, Illinois in good order and condition, reasonable wear and tear excepted. Lessee shall bear outgoing and freight return costs. Lessee shall pay or reimburse Lessor for any reasonable and ordinary expenses incurred by Lessor in returning the locomotives to good order and condition, in delivering the locomotives to Lessor or effecting return of the locomotives from Lessee as provided herein. All obligations of Lessee under this Lease shall continue with respect to the locomotives not returned by the expiration or earlier termination as permitted herein until such locomotives are returned to the Delivery Location in accordance herewith including, without limitation, the obligation to pay rent, which shall increase to \$150.00 dollars per day for the first 45 days the locomotive(s) are late and to 150% of such rate thereafter. Shipment cost and risk of loss during ship shall be Lessee's responsibility.

7. WARRANTY DISCLAIMER

Lessee hereby acknowledges that Lessee has had or will have the opportunity to inspect the locomotives prior to accepting delivery of same, and that acceptance of delivery of the locomotives by Lessee constitutes acknowledgement that they have been received in

good condition and repair.

LESSOR MAKES NO REPRESENTATION OR WARRANTY EXPRESS OR IMPLIED, WITH RESPECT TO THE CONDITION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE LOCOMOTIVE and LESSOR HEREBY DISCLAIMS ALL SUCH REPRESENTATION AND WARRANTY. LESSOR SHALL NOT BE RESPONSIBLE FOR ANY CONSEQUENTIAL, INCIDENTAL OR INDIRECT DAMAGES.

8. USE AND MAINTENANCE

Lessee agrees that:

A. Lessee shall be responsible and pay for all registrations, certificates, and permits, and all other similar requirements of governmental authorities, whether required to be obtained in the name of the Lessor or Lessee.

B. The locomotives shall be used and operated only by properly qualified, trained and registered personnel authorized by Lessee.

C. Lessee shall comply with all federal, state, municipal and local laws, ordinances, and rules, and regulations relating to the lease, possession, insuring, use and operation of the locomotives.

D. Lessee shall be solely responsible for the payment of any and all fines, penalties or forfeitures (including without limitation the confiscation of the locomotive levied upon or arising out of the use, operation, maintenance or insuring of the locomotives in violation of any law, ordinance, rule or regulation of any governmental authority.

E. Lessee shall pay all costs, expenses and charges incurred in connection with the maintenance, lease, use and operation of the locomotives.

F. Lessee shall maintain the locomotives in good mechanical condition and running order and in compliance with OEM specifications and safety rules and regulations now or hereafter promulgated by applicable governmental authorities.

G Lessee shall keep and maintain any and all books and records and make any filings required by any governmental authority with respect to the possession, lease, use or operation of the locomotives.

9. INSURANCE / INDEMNIFICATION

A. Railroad liability insurance providing coverage in an amount not less than five million (\$5,000,000) dollars combined single limit per occurrence and ten million (\$10,000,000.00) dollars combined in the aggregate shall be provided by Lessee at Lessee's sole expense throughout the term of this Lease as to each locomotive. The insurance policy or policies providing the foregoing coverage

shall:

i. be written by an insurance company or companies satisfactory to Lessor and authorized to transact business in all of the states in which the locomotives will be used and operated.

ii. name Lessor and Lessee as insured parties.

iii. protect the interests of Lessor and Lessee, including Lessee's authorized operators, with respect to liability for injuries to or the death of third party persons and damage to or loss of use of property of third persons resulting from the ownership, maintenance, use or operation of the locomotives.

iv. provide by endorsement or otherwise that the coverage shall be primary coverage as to Lessor and show Lessor as additional insured.

v. provide that the insurance company or companies issuing such policy or policies shall notify Lessor of any cancellation thereof at least thirty-(30) days prior thereto.

B. Lessee, at Lessee's sole expense, shall provide collision and comprehensive physical damage insurance on each locomotive. The insurance policy or policies providing the foregoing coverages shall:

i. is written in standard form by an insurance company acceptable to Lessor.

ii. provide coverage in an amount not less than the replacement value of the locomotives.

iii. provide for losses to be payable to Lessor and Lessee as their respective interests may appear.

C. Lessee shall furnish Lessor with a certificate(s) of insurance or other evidence of said insurance coverage.

D. Notwithstanding that Lessee shall provide certain insurance hereunder and irrespective of any responsibility for negligence, Lessee does hereby agree to defend, indemnify, protect and hold harmless Lessor and any assignees or successors of Lessor, and their respective employees and agents, from and against any and all losses, liabilities (including without limitation strict liability imposed by law), damages, injuries, claims, demands and expenses (including legal expenses) of whatsoever kind and nature; resulting from or arising out of the use, condition, operation or ownership of the locomotives. This covenant of indemnity shall continue in full force and effect notwithstanding the termination of this lease or the termination of the lease of the locomotives.

E. Lessee assumes and agrees to indemnify, protect and hold free and harmless Lessor, any assignee or successor of Lessor, and their respective employees or agents, irrespective of any responsibility for negligence, from any loss, damage, theft or destruction of the locomotives. In the event of damage to the Locomotives, Lessee shall immediately place the same in good repair (ordinary wear and tear excepted). If Lessor, in the exercise of its reasonable judgment, determines that any item of the Locomotives is lost, stolen, destroyed, damaged beyond repair or rendered permanently unfit for use for any reason, or in the event of condemnation or seizure of the Locomotives, Lessee shall (at Lessor's option) (i) replace such locomotive with substantially similar equipment of equal or greater value and in good repair and transfer title thereto to Lessor free and clear of any all liens, claims and encumbrances of any kind or nature whatsoever, or (ii) pay Lessor in cash the sum of (a) any installments of rent and other amounts payable by Lessee hereunder with respect to such item due but unpaid at the date of such payment plus (b) the Replacement Value of such Locomotive determined in accordance with Schedule A. Upon payment of such amount to Lessor, such item shall become the property of Lessee, Lessor will transfer to Lessee, without recourse or warranty, all of Lessor's right, title and interest therein, the rent with respect to such item shall terminate, and the basic rental payments on the remaining items shall be reduced accordingly. Lessee shall pay any sales and use taxes due on such transfer.

F. If Lessee shall fail to obtain or maintain the insurance coverage required in this lease, or shall fail to furnish Lessor with evidence thereof, Lessor at its option, may obtain such required insurance coverage on behalf of Lessee and Lessee's expense.

10. ASSIGNMENT. WITHOUT LESSOR'S PRIOR WRITTEN CONSENT, LESSEE WILL NOT SELL, ASSIGN, SUBLET OR OTHERWISE ENCUMBER OR PERMIT A LIEN ARISING THROUGH LESSEE TO EXIST ON OR AGAINST ANY INTEREST IN THIS LEASE OR THE LOCOMOTIVE. Lessor may assign its interest in this lease and sell or grant a security interest in all or any part of the Locomotives without notice to or the consent of Lessee. Lessee agrees not to assert against any assignee of Lessor any claim or defense Lessee may have against Lessor, it being understood that in the event of a default or breach by Lessor, Lessee shall pursue any rights on account thereof solely against Lessor. Lessor and Lessee further agree that no such assignment shall change Lessee's duties or obligations under this lease or increase Lessee's risks or burdens, all of which shall remain as set forth herein. Each party to this Lease acknowledges notice of and consents in all respects to, the terms of this Lease.

11. FINANCIAL DATA

Upon the written request of Lessor, Lessee shall furnish to Lessor, when reasonably available, copies of Lessee's financial statements and such other reports and statements concerning this Lease and the locomotives as Lessor reasonably may request.

12. MANDATORY BUYOUT

Lessee shall purchase the locomotive at the end of the initial lease term, so long as no Event of Default shall have occurred and is continuing, in which case, the Lessor may elect to permit or not permit the purchase. The purchase buyout amount and timing to exercise the buyout is listed on Schedule A. There shall be no warranty for such buyout, the locomotive(s) shall be as is, where is.

13. DEFAULT

A. Lessee shall be in default under this Lease upon the happening of any of the following events or conditions ("Event of Default"):

- i. Default in the payment when due of any installment of rental hereunder or of any other obligation for the payment of money now or hereafter owed by Lessee to Lessor.
- ii. Default in the timely performance of any other liability, obligation, covenant or agreement hereunder of Lessee.

14. REMEDIES UPON DEFAULT

A. Upon the occurrence of any Event of Default or at any time hereafter, Lessor, in its sole discretion, may take anyone or more of the following actions with respect to the locomotives:

- i. Declare all unpaid lease payments to be immediately due and payable.
- ii. Terminate the lease of any or all locomotives by written notice to Lessee.
- iii. Whether or not the lease is terminated, take possession of any or all locomotives wherever found, and for this purpose Lessor may at Lessor's option enter upon the premises where such locomotives are located and take immediate possession of and remove the same, all without liability to Lessee for damage to property or otherwise.
- iv. Termination of this lease does not terminate, limit, or restrict the rights and remedies of Lessor. In addition to Lessor's right under common law to redress for any breach or violation, Lessee shall indemnify and defend Lessor against all losses, damages, cost and expenses (including, without limitation, interest, penalties, court costs, and attorney's fees and expenses) asserted against, imposed upon, or incurred by Lessor, directly or indirectly, arising out of or resulting from any breach or violation.

- v. Require that Lessee shall, upon demand by Lessor and at Lessee's expense, promptly make available to Lessor at Lessee's expense, any or all locomotives at a place designated by Lessor which is reasonably convenient to both parties.
- vi. Use, hold, sell, lease or otherwise dispose of any or all such locomotives as Lessor in its sole discretion may decide, without affecting the obligations of Lessee as provided in this Lease.
- vii. Proceed by appropriate action either at law or in equity to enforce performance by Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof or to rescind the lease hereunder of the locomotives.
- viii. Exercise any and all rights and remedies available to Lessor under any applicable law. In addition, Lessee shall be charged with and shall pay to Lessor all damages resulting from the ordinary course of events from the Lessee's default as determined in any reasonable manner, together with incidental damages, less expenses saved in consequence of each Event of Default by Lessee.
- ix. In addition to other remedies available, lessor may also recover from lessee the amount which will fully compensate the lessor for any loss or damage to the Lessor's residual interest in the goods caused by the default of the lessee

B. None of the rights and remedies under or referred to is intended to be exclusive, but each such right or remedy shall as to each locomotive be cumulative and may be availed of separately or concurrently with or in addition to any other right or remedy provided or referred to herein or otherwise available to Lessor at law or in equity. Any repossession or subsequent sale or lease by Lessor of any locomotives shall not bar an action against lessee for a deficiency. To the extent permitted by applicable law, **LESSEE WAIVES ANY AND ALL RIGHTS TO NOTICE AND TO A JUDICIAL HEARING WITH RESPECT TO THE REPOSSESSION OF LOCOMOTIVES BY LESSOR AS A RESULT OF ANY EVENT OF DEFAULT HEREUNDER BY LESSEE.**

C. Without limitation of any rights of Lessor otherwise existing or otherwise available to Lessor, it is expressly covenanted and agreed by the parties hereto that in the event of any assignment by operation of law of this Lease or of any lease hereunder, or 'of a bankruptcy of Lessee within the meaning of the Federal Bankruptcy Act, then Lessor may, at Lessor's election, terminate this Lease or any one or more leases hereunder.

15. RECORDATION OF LESSOR'S INTEREST

Lessee agrees to properly execute all recording documents requested by Lessor to show Lessor's interest in the locomotives. Lessee further authorizes Lessor to execute and file financial statements or other documents evidencing Lessor's interest in the locomotives without Lessee's signature.

16. MISCELLANEOUS

- A. This Lease and all rights and obligations hereunder shall be governed by and construed in accordance with the laws of the State of Illinois. Illinois shall be choice of forum for all litigation.
- B. Neither this Lease nor any schedule shall be amended, and no provision hereof or of any Schedule shall be waived or varied unless by writing signed by the parties.
- C. No delay or omission by Lessor in exercising any right hereunder shall operate as a waiver of such right or any other right. A waiver by Lessor of any Event of Default by Lessee shall not be construed as a waiver of any future occasion.
- D. In case any provision (or portions thereof) in this lease shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions (or portions thereof) hereby shall not in any way be affected or impaired thereby.
- E. This Lease shall be binding upon and inure to the benefit of Lessor and Lessee and their respective successors.
- F. All notices permitted or required to be given pursuant to this Lease shall be mailed by Certified or Registered Mail, Return Receipt Requested to the parties at the following addresses or at such other addresses as each party may notify each other.

If to Lessor: National Railway Equipment Co.
14400 South Robey Street
Dixmoor, Illinois 60448-8400

If to Lessee: Industrial Railway Switching & Services, Inc.
1020 Washington Avenue
Chicago Heights, Illinois 60411

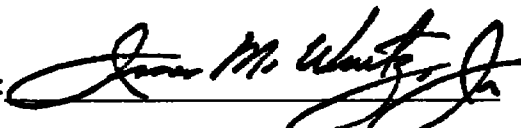
WITNESS WHEREOF, the parties have executed this Lease the day and year first mentioned above.


LESSOR:

LESSEE:

NATIONAL RAILWAY EQUIPMENT CO.


**INDUSTRIAL RAILWAY
SWITCHING & SERVICES, INC.**


By: 
Name: JAMES M. WURTZ JR
Title: VP MARKETING & SALES

By: 
Name: BL FORBEY
Title: PRESIDENT

ATTEST:

ATTEST:

By: 
Title: General Counsel

By: 
Title: VICE-PRESIDENT

SCHEDULE "A"

Attached to and incorporated into the Lease dated the 14th day of July 2010, by and between the National Railway Equipment Co. ("LESSOR") and Industrial Railway & Switching Services, Inc., ("LESSEE").

Type and General Description of Locomotive Unit(s), Marks and Numbers:

Unit No: Type: General Description:

NREX 7351	SD40-2	EMD Six Axle
NREX 7352	SD40-2	EMD Six Axle

REPLACEMENT	LEASE	LEASE RATE PER
VALUE	TERM	LOCOMOTIVE

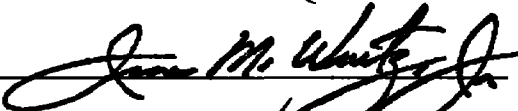
36 Months
36 Months

RATE AND TERM: Subject locomotive is a portal to portal lease for a period of 36 months. Outbound and return freight (if applicable in the event of default) is to the account of the Lessee.


MANDATORY LOCOMOTIVE BUYOUT AMOUNT AND TIMING: \$68,000.00 per Locomotive on/or before the termination date.

COMMENCEMENT DATE: Upon ex-works shipment Paducah, Kentucky
Subject locomotive is a portal to portal lease

LESSOR: NATIONAL RAILWAY EQUIPMENT CO.

By: 
Name: JAMES M. WERTZ JR
Title: VP MARKETING & SALES

LESSEE: INDUSTRIAL RAILWAY & SWITCHING SERVICES, INC.

By: 
Name: BL FORLEY
Title: PRESIDENT

MEMORANDUM OF LOCOMOTIVE LEASE AGREEMENT

THIS MEMORANDUM OF LOCOMOTIVE LEASE AGREEMENT has an effective date of July 14, 2010 and is by and between National Railway Equipment Co. ("Lessor"), and Industrial Railway & Switching Services, Inc. ("Lessee"), with reference to the following:

1. Lessor has agreed to lease to Lessee, and Lessee has agreed to lease from Lessor the Locomotive model described herein. This MEMORANDUM OF LEASE AGREEMENT evidences a lease.

The locomotives are fully-described in a certain Lease Agreement with an effective date of June 14, 2010, (the "Lease"), between Lessor and Lessee. A schedule of the equipment is attached hereto.

2. All terms of the LOCOMOTIVE LEASE AGREEMENT are hereby referred to and incorporated in this memorandum by reference.

The MEMORANDUM OF LOCOMOTIVE LEASE AGREEMENT may be executed counterpart constituting an original but all together only one MEMORANDUM OF LEASE AGREEMENT.

IN WITNESS WHEREOF, the parties hereto have executed or caused this MEMORANDUM OF LEASE AGREEMENT to be executed as of the date first above written.

LESSEE:

INDUSTRIAL RAILWAY & SWITCHING SERVICES, INC.

By: BK Forgy

Name: BK Forgy

Title: PRESIDENT

LESSOR:

NATIONAL RAILWAY EQUIPMENT CO.

By: James M. White Jr.

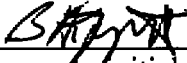
Name: JAMES M. WHITE JR.

Title: VP MARKETING + SALES

SCHEDULE OF EQUIPMENT

Lessor: National Railway Equipment Co.

Lessee: Industrial Railway & Switching Services, Inc.

Approved by: 
(Lessee to initial each page)

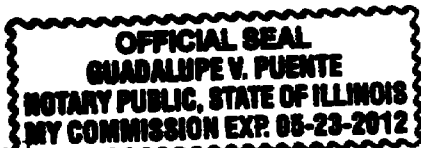
Equipment Schedule No.:

Type and General Description of Locomotive Unit(s), Marks and Numbers:

<u>Unit No:</u>	<u>Type:</u>	<u>General Description:</u>
NREX 7351	SD40-2	EMD Six Axle
NREX 7352	SD40-2	EMD Six Axle

STATE OF ILLINOIS
COUNTY OF COOK) SS.

On this 19th day of July, 2010, before me appeared Benjamin Forgy, the person who signed this instrument who acknowledged that (s) he is the LESSOR of IRSS and that, being duly authorized, (s) he signed such instrument as a free act on behalf of said corporation.



[Seal]

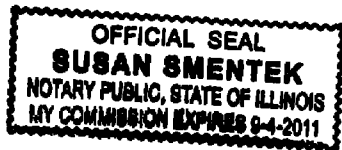
[Signature]
Notary Public

My Commission Expires:

05/23/2012

STATE OF Illinois
COUNTY OF Cook) SS.

On this 26th day of July, 2010, before me appeared James M. Wurtz, the person who signed this instrument who acknowledged that (s) he is an officer of National Railway Equip Co and that, being duly authorized, (s) he signed such instrument as a free act on behalf of said corporation.



[Seal]

[Signature]
Notary Public

My Commission Expires:

9-4-2011